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8 Attorneys for Defendants
9 SAFER TECHNOLOGIES, INC.,
10 CERMA TECHNOLOGY, INC.,
11 GEORGE ACKERSON, MARY STRANAHAN,
12 NICHOLAS STREIT and EDWARD HALBACH

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 MOTOR WORKS LLC,

17 Plaintiff,

18 vs.

19 SAFER TECHNOLOGIES, INC., CERMA
20 TECHNOLOGY, INC., GEORGE
21 ACKERMAN, MARY STRANAHAN,
22 NICHOLAS STREIT, TIM STREIT and
23 EDWARD HALBACH,

24 Defendants.

Case No.: 08-CV-03608 JW

**DECLARATION OF KRISTEN E. DRAKE
IN SUPPORT OF DEFENDANTS'
MOTION TO SHORTEN TIME FOR
HEARING OF DEFENDANTS' MOTION
FOR LEAVE TO FILE A MOTION FOR
RECONSIDERATION OF THE COURT'S
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

**OR IN THE ALTERNATIVE
DEFENDANTS' MOTION TO REOPEN
DISCOVERY TO COMPEL RESPONSES
TO DEFENDANTS' OUTSTANDING
DISCOVERY AND COMPLETE THE
DISCOVERY PROCESS**

25 I, Kristen E. Drake, declare:

26 1. I am an attorney at law duly admitted to practice before all the courts of the State
27 of California. I am associated with the law firm of Craigie, McCarthy & Clow, attorneys of
28 record for defendants Safer Technologies, Inc., Cerma Technology, Inc., George Ackerson, Mary
Stranahan, Nicholas Streit and Edward Halbach.

2. Defendants have filed a Motion for Leave to File a Motion for Reconsideration of the Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment or in the Alternative, Defendants' Motion to Reopen Discovery to Compel Responses to Defendants' Outstanding Discovery and Complete the Discovery Process which is set for hearing on January 11, 2010. Defendants move to shorten time for hearing on this motion and propose that the hearing be set for December 21st, any opposition papers filed by December 11th and any reply papers filed by December 14th.

3. Defendants move to shorten time because the pendency of this lawsuit, having no factual support whatsoever, has significantly hampered Defendant Safer Technologies business operations and resulted in significant lost sales of engine additive under its registered CERMAX brand name.

4. The Court's Summary Judgment Order identifies Plaintiff Motor Works as the *manufacturer* of the product at issue (Order, page 7, line 22) and heavily relies on a case between a manufacturer and a distributor. However, both Plaintiff and Defendants in this case are nonexclusive *distributors* of the engine additive product at issue, a chemical product named BYK-333. The *manufacturer* of the product is a German based company, ALTANA AG.

5. Thus, Defendants do not understand the Court's reliance on *Sengoku Works Ltd. v. RMC International, Ltd.*, 96 F.3d 1217 (9th Cir. 1996). This case was not cited by either party and involves a lawsuit by a product *manufacturer* against a product *distributor* for violation of an oral exclusive distribution agreement. Plaintiff Motor Works falsely alleges it is the manufacturer of BYK-333, basing its infringement and related claims on this falsehood. However, the undisputed facts establish that the statement is false, and further establish that the mark/name in dispute, CERMAX, is registered to Defendant Safer Technologies, Inc.

6. In an effort to obtain a stipulation to shorten time for hearing on Defendants' motion, I e-mailed opposing counsel Robert Weems on Friday, December 4, 2009. A true and correct copy of the e-mail is attached hereto as Exhibit "A". Further, I left a voicemail message for Mr. Weems on Monday, December 7, 2009. Mr. Weems did not respond to my e-mail or voicemail message.

Exhibit “A”

From: craigielaw@aol.com

To: rcweems@weemslawoffices.com

Cc: JimHanavan@aol.com

Subject: Stipulation to Shorten Time on Motion

Date: Fri, Dec 4, 2009 3:17 pm

Attachments: Notice_of_Motion_for_Leave.doc (43K), Brief_Motion_for_Leave.doc (48K)

Dear Mr. Weems,

Enclosed is the notice and our brief in support of our Motion For Leave to File a Motion for Reconsideration of the Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment or in the alternative Defendants' Motion to Reopen Discovery to Compel Responses To Defendants' Outstanding Discovery and Complete the Discovery Process.

Please advise as to whether you would agree to stipulate to a shortened-time schedule for this motion. We propose that the hearing be set for December 21st, any opposition due by December 11th and any reply due by December 14th. Please advise if that is acceptable.

Thank you,
Kristen Drake